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JUDICIAL CONFERENCE OF THE UNITED STATES  
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MEMORANDUM

To: Chief Judges, United States Courts  
District Court Executives  
Clerks, United States Courts

From: Honorable John R. Tunheim 

RE: RECENT JUDICIAL CONFERENCE ACTIONS REGARDING THE ELECTRONIC  
AVAILABILITY OF TRANSCRIPTS OF COURT PROCEEDINGS  
(**INFORMATION**)

This September, the Judicial Conference adopted a policy regarding the electronic availability of transcripts of court proceedings. This action will result in the completion of the case file in the Case Management/Electronic Case Files (CM/ECF) system, as well as satisfaction of the requirements of the E-Government Act of 2002. Because the policy is somewhat complicated, I thought it would be helpful to provide you with some information explaining the issue and the new policy.

By way of background, in 2003, the Conference adopted a policy requiring courts to include official transcripts of court proceedings in their electronic case file systems. (JCUS-SEP 03, pp.16-17). Implementation of the policy was deferred, however, until the Judicial Conference could study the effect of the policy on court reporter compensation. After a great deal of work by the Committee on Court Administration and Case Management, and other Conference committees, the Conference, this past September, adopted a plan that will incorporate transcripts of court proceedings in the electronic case file system, while recognizing the court reporters' statutory authority to sell copies of transcripts.

Under the new policy, electronic transcripts, once ordered by a party or the court and produced by the court reporter, will be available for public inspection (but not copying) at the clerk's office as soon as they are provided to the clerk of court as required by 28 U.S.C. §753. For 90 days after delivery to the clerks' offices, however, individuals wishing to purchase a copy of a transcript – in either paper or electronic form – must do so through the court reporter or transcriber, as appropriate. A docket entry in the CM/ECF system will provide information as to how to contact the reporter or transcriber. An attorney on the case who has purchased a transcript (either an original or a copy) will be given access to it through the court's CM/ECF system during the initial 90-day period, to allow for compliance with the Judicial Conference's redaction policy (discussed more fully below), as well as for the creation and filing of appellate briefs containing hyperlinks to the transcript. The transcript will be available in CM/ECF for court use at all times. The 90-day delay will protect the court reporters' right to charge for the copies purchased soon after the original is prepared.

To other users, electronic public access to transcripts through the PACER system will be available beginning 90 days after the court reporter or transcriber has provided the transcript to the clerk. At that point, an individual will be able to view, download, or print a copy of the transcript from PACER for eight cents per page. Transcripts will also be available for public copying at the clerk's office at that time. No portion of the receipts from the access through PACER will be provided to the court reporter or transcriber who created the transcript. Of course, parties choosing to do so could purchase copies directly from the court reporter or transcriber after the 90-day period.

Because the implementation plan will allow for public review of the transcript at the clerk's office during the initial 90-day period, the policy complies with 28 U.S.C. §753(b), which states that "the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge." It also complies with subsection (f) of that statute, which provides court reporters with the authority to sell transcript copies. In addition, the policy does not change existing Judicial Conference policy regarding copies purchased by attorneys appointed under the Criminal Justice Act in multi-defendant cases. Finally, by creating a complete electronic case file in CM/ECF, this proposal accomplishes the goals of the Committee and the Conference and complies with the requirements of the E-Government Act of 2002.

The district CM/ECF software is currently being modified to assist courts in implementing this policy. Software for the district courts will be available in December 2007. As we get closer to that date, more information will be provided as to how district courts can implement the policy. I expect that the Committee will, at its December 2007 meeting, consider setting a date by which district courts shall be required to have implemented the 90-day access policy. Until the software is available, courts may, but are not required to, implement the 90-day access policy.

The bankruptcy CM/ECF software is also being modified as required by this new policy. It will be available in the Spring of 2008, at which time courts should take steps to implement the software changes and adhere to the new policy. Additional documentation for bankruptcy courts will be forthcoming as the software modifications near completion.

In 2003, the Conference adopted redaction procedures to assist courts in applying the privacy policy and pending federal rules of procedure<sup>1</sup> to transcripts that are made electronically available to the public. These procedures apply in both district and bankruptcy courts any time an official transcript of a court proceeding is made available to the public electronically. The Committee, under a delegation from the Conference, is working on revising those procedures to comply with the 90-day access policy.<sup>2</sup>

If you have questions about the policy, please contact the Administrative Office's Court Administration Policy Staff, which staffs the Committee, at (202) 502-1560. Questions about policy implementation for the district courts can be directed to the District Court Administration Division at (202) 502-1570 and for the bankruptcy courts to the Bankruptcy Court Administration Division at (202) 502-1540.

On behalf of the Committee, I want to thank you for your assistance in the implementation of this policy. Its development has been a complicated and difficult process, in which the Committee has been engaged for over five years. Its enactment is a major accomplishment for the entire Judiciary, ensuring that court reporters will be able to earn significant copy income while at the same time, providing easy, affordable access to the entire case file.

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<sup>1</sup>These rules are Fed. R. App. P. 25(a), Fed. R. Civ. P. 5.2, Fed. R. Crim. P. 49.1, and Fed. R. Bankr. P. 9037.

<sup>2</sup>The procedures had previously allowed courts to make the transcript electronically available after the time period for filing a notice of intention to redact had lapsed with no such filing having been made. Because this would violate the new 90-day access policy, that provision will be eliminated from the revised procedures. For more information on the redaction procedures, see [Director Duff's memorandum dated May 15, 2007](#), available on the J-Net.